

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Columbia Communications Corporation)	
)	File No. SAT-MOD-20000208-00058
Application for Amendment to Pending)	
Application to Extend Milestones)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 4, 2000

Released: April 5, 2000

By the Deputy Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we deny Columbia Communications Corporation's (Columbia's) second request for a further extension of the construction commencement milestone applicable to its license to provide service in the C-band from its satellite to be located at 47° W.L. Columbia has had fifteen months to begin construction of this satellite, and it has already received one extension of the original milestone, which was originally scheduled to lapse in September 1999. Columbia has not met its burden of demonstrating that it faces extraordinary circumstances beyond its control that would warrant additional time in which to begin construction. Granting Columbia's request would contravene the Commission's policy prohibiting licensees from holding scarce orbit resources, thereby precluding effective use by others, while incumbent licensees examine whether and how to proceed with their plans.

II. BACKGROUND

2. In 1996, the International Bureau (the Bureau) granted Columbia Special Temporary Authority (STA) to lease C-band capacity on NASA's TDRS-6 satellite, located at 47° W.L., subject to coordination with adjacent satellite operators.¹ In January 1999, the Bureau granted Columbia authority to launch and operate its own C-band satellite at 47° W.L.² Under the original terms of its license, which were based on the representations in Columbia's application, Columbia was scheduled to commence construction of this

¹ Columbia Communications Corporation, Order, 11 FCC Rcd 8639 (Int'l Bur. 1996) (*Columbia STA Order*). For purposes of this Order, "C-band" denotes the 3700-4200 MHz and 5925-6425 MHz frequency bands.

² Columbia Communications Corporation, Order and Authorization, 14 FCC Rcd 3318 (1999) (*Columbia Authorization Order*).

satellite in September 1999.³ We have already granted Columbia one extension of its construction commencement milestone, to April 5, 2000.⁴

3. On May 11, 1999, Columbia requested us to extend again the construction commencement milestone applicable to its C-band satellite.⁵ On January 21, 2000, the Bureau denied Columbia's request.⁶ On February 8, 2000, Columbia filed another request for extension, making essentially the same arguments that the Bureau considered in denying the previous petition on January 21.

4. In support of its May 1999 milestone extension request, Columbia argued that it could not proceed with construction until it knew whether its request for Ku-band authority at 47° W.L. would be granted.⁷ We explained that milestone schedules are included as a condition of space station authorizations to ensure that licensees are moving forward with the construction and launch of their systems in a timely manner. Requiring licensees to make and fulfill realistic construction and launch commitments prevents increasingly scarce orbital resources from being warehoused by licensees. Such warehousing could hinder the availability of services to the public by blocking entry by other entities willing and able to proceed immediately with the construction and launch of their satellite systems.⁸

5. We explained further that we grant milestone extensions only in the case of extraordinary circumstances beyond the control of the licensee.⁹ We determined that Columbia's decision to seek a license modification to add Ku-band capacity to its satellite was a business decision within the control of the licensee, and so was not a "circumstance beyond its control" that would justify a milestone extension.¹⁰

³ *Columbia Authorization Order*, 14 FCC Rcd at 3330 (para. 40).

⁴ We granted Columbia its first milestone extension on April 5, 1999, because the milestone schedule established in the *Columbia Authorization Order* was shorter than the schedule typically specified for geostationary satellite providers of fixed satellite services. *See* Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, to Raul R. Rodriguez, Counsel for Columbia (dated April 5, 1999) (*April 5 Letter*).

⁵ In its May 1999 request, Columbia also petitioned us to revoke Loral Space & Communications Ltd.'s (Loral's) authorization to launch and operate a Ku-band satellite at 47° W.L. In addition, Columbia requested authority to add Ku-band capacity to Columbia's C-band satellite at 47° W.L. For purposes of this Order, "Ku-band" denotes the 11.7-12.2 GHz and 14.0-14.5 GHz frequency bands.

⁶ Columbia Communications Corporation, Memorandum Opinion and Order, DA 00-113 (Int'l Bur., released Jan. 21, 2000) (*Columbia Modification Order*) (*petition for recon. pending*).

⁷ *See Columbia Modification Order* at para. 11.

⁸ *Columbia Modification Order* at para. 11.

⁹ *Columbia Modification Order* at para. 11, *citing* National Exchange Satellite, Inc., Memorandum Opinion and Order, 7 FCC Rcd 1990, 1991 (para. 8) (Com. Car. Bur. 1992) (*Nexsat Order*); MCI Communications Corporation, Memorandum Opinion and Order, 2 FCC Rcd 233 (1987) (*MCI Order*); Hughes Communications Galaxy, Order and Authorization, 5 FCC Rcd 3423, 3424 (Com. Car. Bur. 1990).

Finally, we observed that milestone extensions could not be justified by delays due to negotiations with potential investors,¹¹ mergers,¹² or construction contract negotiations.¹³

6. On February 8, 2000, Columbia submitted another request to extend the construction commencement milestone, from April 5, 2000 to a date two weeks after Commission action on its pending request to transfer control of its licenses to GE American Communications, Inc. (GE Americom).¹⁴ In the alternative, Columbia seeks a waiver of this milestone.¹⁵ According to Columbia, the pending merger application creates uncertainty regarding the financially responsible contracting party, and this uncertainty may potentially increase the cost of the spacecraft.¹⁶ GE Americom filed comments supporting Columbia's request to extend its construction commencement milestone. No other parties filed comments.¹⁷

III. DISCUSSION

A. Request for Milestone Extension

7. We deny Columbia's request because Columbia fails again to show that the cause of its delay in beginning to construct a satellite licensed over a year ago is a "circumstance beyond its control." Rather,

¹⁰ Columbia Modification Order at para. 12.

¹¹ Columbia Modification Order at para. 12 n.35, citing Advanced Communications Corporation, Memorandum Opinion and Order, 11 FCC Rcd 3399, 3417 (para. 45) (1995) (*Advanced Review Order*).

¹² Columbia Modification Order at para. 12 n.35, citing MCI Order, 2 FCC Rcd at 234 (para. 7).

¹³ Columbia Modification Order at para. 12 n.35, citing American Telephone and Telegraph Company and Ford Aerospace Satellite Services Corporation, Memorandum Opinion and Order, 2 FCC Rcd 4431, 4433-34 (paras. 21-23) (1987) (*AT&T/Ford Order*).

¹⁴ On February 3, 2000, GE Americom and Columbia filed a joint application to transfer Columbia's space station and earth station licenses to GE Americom. File Nos. SAT-T/C-20000203-00056; SES-T/C-20000203-00142.

¹⁵ Columbia Request at 6-7. Columbia notes that Section 25.153(a) of the Commission's rules, 47 C.F.R. § 25.153(a), bars an applicant from filing repetitious applications within twelve months of a denial of an application. Columbia argues that Section 25.153(a) does not apply because it asks for different relief and provides different grounds for the extension request before us now. Columbia Request at 2 n.1. We will not determine at this time whether styling the request as one to "toll milestones" rather than to "extend milestones," changing the time period of the extension request, or providing different arguments to support the request warrants treating the request as "non-repetitious" for purposes of Section 25.153(a). Rather, we waive Section 25.153(a) to the extent necessary to address Columbia's request on its merits.

¹⁶ Columbia Request at 3.

¹⁷ On March 3, 2000, Columbia filed a letter requesting expedited treatment of its request, and a draft letter granting its request. Letter from Raul R. Rodriguez and David S. Keir, Counsel to Columbia Communications Corporation, to Don Abelson, Chief, International Bureau (dated March 3, 2000) (*March 3 Letter*).

the cause of delay is a business decision within the control of the licensee. Columbia seeks an extension because it was negotiating a possible merger with GE Americom concurrently with its negotiation of a construction contract for its C-band satellite at 47° W.L.¹⁸ Columbia maintains that several contract terms, such as "the specific terms of financing and appropriate contract termination penalties," may differ depending on whether Columbia is authorized to transfer its licenses to GE Americom.¹⁹ Thus, Columbia asserts that its pending transfer of control application creates "regulatory uncertainty that presents a substantial impediment towards completion of a construction contract."²⁰

8. Columbia's reasoning is unpersuasive for several reasons. First, Columbia's concerns over the potential for additional cost or complexity in its construction contract are not sufficient grounds for granting a milestone extension request. Second, Columbia fails to meet its burden of demonstrating that it qualifies for an additional milestone extension. Third, Columbia fails to recognize that a milestone is a legally binding condition on the licensee's authorization. It is mistaken in assuming that a milestone is merely a "moment in time that has been chosen for the purpose of determining whether a licensee has taken adequate steps toward the ultimate goal of commencing service."²¹ We discuss each of these reasons below.

1. Contractual Complexity

9. Columbia asserts that extension of its construction commencement milestone is justified by the "regulatory uncertainty" created by the pending GE Americom/Columbia merger application.²² According to Columbia, the pending merger application "presents a substantial impediment" to finalizing a construction contract, because the specific terms of financing and contract termination penalties may differ depending on whether the merger application is granted.²³ Columbia also maintains that contract negotiations and the final construction contract will be "unnecessarily complicated" if completed before the Commission acts on the merger application, and that this complexity could "potentially increas[e] the cost of the spacecraft."²⁴

10. A desire to avoid increased costs or contractual complications is a business decision within the control of the licensee, which does not justify a milestone extension. In the *MCI Order*, the Common Carrier Bureau denied MCI's milestone extension request in part because MCI had not shown that the

¹⁸ Columbia Request at 3-4.

¹⁹ Columbia Request at 4 n.7.

²⁰ Columbia Request at 4 n.7.

²¹ Columbia Request at 6.

²² Columbia Request at 4 n.7.

²³ Columbia Request at 4 n.7.

²⁴ Columbia Request at 3.

complexities surrounding its planned merger were "anything other than the necessary and routine matters involved in such an, albeit large, transaction."²⁵ Similarly, Columbia has not shown that accounting for merger-related contingencies in a construction contract would be substantially different than the necessary and routine matters normally involved in a merger transaction. Furthermore, the "regulatory uncertainty" cited by Columbia would not exist if it had not filed its merger application, and so it is a direct result of Columbia's business decision to merge with GE Americom.²⁶ Recasting a pending merger application as "regulatory uncertainty" does not convert it into a circumstance beyond the licensee's control, and so does not justify a milestone extension.²⁷

11. In addition, Columbia's contention that a complicated contract could "potentially increase the cost of the spacecraft"²⁸ is an economic consideration that cannot justify a milestone extension. In the *AT&T/Ford Order*, the Commission determined that AT&T could not justify a milestone extension by asserting that delay might clarify certain launch and insurance issues and lower satellite construction costs.²⁹ The Commission concluded that AT&T's extension request was motivated primarily by economic considerations, and that such considerations were not a sufficient basis for granting a milestone extension request.³⁰ Columbia's concerns over construction cost increases caused by contractual complications are also economic considerations. Furthermore, even if we could extend a milestone for economic considerations, Columbia does not elaborate on either the likelihood or the amount of any cost increases that might be caused by the outstanding merger application. Consequently, we would still conclude that Columbia's request was not justified.

12. Even assuming, however, that contractual complications could justify a milestone extension, Columbia has not shown that this is such a case. Columbia asserts only that the pending merger application presents a "substantial impediment" to finalizing a construction contract. Columbia does not explain why it and the satellite vendor could not agree to a contingent contract by April 5, 2000 that would transfer to GE Americom if the merger is approved.³¹ Thus, in addition to failing to show that it faces

²⁵ *MCI Order*, 2 FCC Rcd at 234 (para. 7).

²⁶ *Columbia Modification Order* at para. 12 n.35; *MCI Order*, 2 FCC Rcd at 234 (para. 7).

²⁷ See also *Norris Satellite Communications, Inc., Application for Review of Order Denying Extension of Time to Construct and Launch Ka-band Satellite System*, Memorandum Opinion and Order, 12 FCC Rcd 22299, 22308 (para. 21) (*Norris Review Order*) (a claim of "regulatory uncertainty" does not constitute an independent basis for granting a milestone extension request, and so does not warrant an otherwise unjustified milestone extension).

²⁸ Columbia Request at 3.

²⁹ *AT&T/Ford Order*, 2 FCC Rcd at 4434 (para. 26).

³⁰ *AT&T/Ford Order*, 2 FCC Rcd at 4434 (para. 26). See also *MCI Order*, 2 FCC Rcd at 234 (para. 7), citing *Rock City Broadcasting, Inc.*, 52 FCC 2d 1246, 1250 (1975); *Community Broadcasters of Cleveland, Inc.*, 58 FCC 2d 1296, 1300 (1976).

³¹ See *Volunteers in Technical Assistance*, Order, 12 FCC Rcd 3094, 3108 (para. 43) (1997) (accounting for contingencies in construction and launch contracts is "not extraordinary.")

circumstances beyond its control, Columbia has failed to show that it is in fact unable to meet its construction commencement milestone.

2. Consistency with Precedent

13. Columbia claims that its milestone extension request is distinguishable from several Orders in which the Commission has denied milestone extension requests in the past, and consistent with Commission Orders granting extensions. We disagree with Columbia.

14. Columbia first cites the *AT&T/Ford Order*, where the Commission denied a request to transfer satellite authorizations from Ford to AT&T, and to extend the milestones associated with three of those authorizations. Columbia asserts that its extension request is distinguishable from the one in the *AT&T/Ford Order* because, unlike Columbia, AT&T was effectively seeking authority to build a new satellite system outside of a processing round.³² To the contrary, AT&T's position with respect to a processing round was not germane to the Commission's decision to deny AT&T an extension of the milestone dates. In particular, the Commission stated "... even if AT&T were considered as [Ford's] successor, the extensions sought are not due to circumstances beyond AT&T's control, and thus cannot be granted,"³³ and that "[h]ad [Ford] requested the modifications sought by AT&T, its applications would not have been granted."³⁴ In so finding, the Commission emphasized that seeking additional time to negotiate a construction contract in view of a proposed merger does not warrant a milestone extension.³⁵ Thus, contrary to Columbia's argument, a "processing round" criterion is not relevant to our consideration of Columbia's milestone extension request.

15. Columbia also observes that, in many Orders denying milestone extension requests, the Commission emphasized that the petitioners requested long extensions of time.³⁶ Columbia argues that its extension request is distinguishable from those requests because it seeks a short extension.³⁷ There is no support in those Orders for Columbia's implicit assumption that the relevant precedent allows milestone extensions for business decisions within the control of the licensee provided that the licensee requests a short extension of time. In any case, allowing a short extension does not provide us with any additional

³² Columbia Request at 5. See *AT&T/Ford Order*, 2 FCC Rcd at 4433 (para. 16).

³³ *AT&T/Ford Order*, 2 FCC Rcd at 4433 (para. 19).

³⁴ *AT&T/Ford Order*, 2 FCC Rcd at 4433 (para. 17).

³⁵ *AT&T/Ford Order*, 2 FCC Rcd at 4433-34 (paras. 19-21).

³⁶ Columbia Request at 5 n.8, citing *Norris Satellite Communications, Inc.*, Order, 11 FCC Rcd 5402 (Int'l Bur. 1996) (*Norris Order*); *Advanced Communications Corporation*, Memorandum Opinion and Order, 10 FCC Rcd 13337 (Int'l. Bur. 1995) (*Advanced Order*); *Nexsat Order*, 7 FCC Rcd 1990; *Geostar Positioning System*, Memorandum Opinion and Order, 6 FCC Rcd 2276 (Com. Car. Bur. 1991); *AT&T/Ford Order*, 2 FCC Rcd at 4433 (para. 18).

³⁷ Columbia Request at 5-6.

assurance that the milestone will be met. Further, it may place us in the position of considering repeated short extensions as the licensee's business and financial plans progress, again with no assurance that the milestone will ultimately be met. Consequently, we will not treat requests for "short" extensions any differently than requests for "longer" extensions.

16. Columbia maintains further that extension is warranted because it limits its request to its construction commencement milestone, and does not seek extension of its construction completion or launch milestones.³⁸ We disagree. If a licensee does not even begin construction of its satellite by the date specified in its license, it raises substantial doubts as to whether the licensee intends to or is able to proceed with its business plan.³⁹ Consequently, to ensure that unused spectrum is reassigned as quickly as possible to another qualified entity that seeks to implement a system, the Commission has strictly construed the construction commencement milestone contained in every space station license.⁴⁰ Thus, Columbia misplaces its reliance on the *AMSC Order* and the *1992 GE Americom Order*.⁴¹ In both Orders, the licensees requested extension of only their construction completion and launch milestones. They had begun construction of their satellites, and were continuing with construction.⁴²

3. Flexibility in Milestone Enforcement

17. Finally, Columbia asserts that a milestone is not an absolute, wholly inflexible "cut-off date."⁴³ Rather, Columbia claims that a milestone is a moment to determine whether a licensee has taken adequate steps towards commencement of service.⁴⁴ To the contrary, milestones are obligations placed on licensees as conditions on their authority to launch and operate a satellite, *not* merely times set aside for a qualitative assessment of a licensee's progress. Columbia's license expressly provides that the license would be null

³⁸ Columbia Request at 7.

³⁹ *AMSC Order*, 8 FCC Rcd at 4042 (para. 13) (failing to begin construction raises questions regarding the licensee's intention to proceed); *Norris Review Order*, 12 FCC Rcd at 22306 (para. 17) (by failing to commence construction or request extension within the milestone deadline, licensee in that Order did not demonstrate a commitment to proceed with its proposed system).

⁴⁰ *AMSC Order*, 8 FCC Rcd at 4042 (para. 13); *Norris Review Order*, 12 FCC Rcd at 22306 (para. 17).

⁴¹ Columbia Request at 6-7, *citing* AMSC Subsidiary Corporation, Applications to Modify Space Station Authorizations in the Mobile Satellite Service, Memorandum Opinion and Order, 8 FCC Rcd 4040 (1993) (*AMSC Order*); Application of GE American Communications, Inc., for Orbital Reassignment and for Modification of Authorization to Construct and Launch the Satcom H-1 Domestic Fixed-Satellite, Memorandum Opinion and Order, 7 FCC Rcd 5169 (Com. Car. Bur. 1992) (*1992 GE Americom Order*).

⁴² *AMSC Order*, 8 FCC Rcd at 4042-43 (para. 14); *1992 GE Americom Order*, 7 FCC Rcd at 5169 (para. 3).

⁴³ Columbia Request at 6.

⁴⁴ Columbia Request at 6.

and void if it failed to meet its construction commencement milestone.⁴⁵ Thus, Columbia has no basis to maintain that its construction commencement milestone was not a "cut-off date." Columbia misinterprets the Orders it cites for the proposition that the Commission is flexible in its milestone enforcement. In cases where the Commission has extended a construction commencement date, other overriding public interest factors or unforeseen circumstances beyond the licensee's control have been involved.⁴⁶ Columbia bases its milestone extension request on a desire to simplify its construction contract, not to facilitate international coordination, or to deal with launch failures, or any other factor outside its control. In summary, there is no policy reason, and no basis in Commission precedent, for treating a milestone commitment as a flexible, qualitative assessment of a licensee's construction progress.

B. Request for Waiver

18. In the event that we conclude that it does not face circumstances outside its control that justify a milestone extension, Columbia seeks waiver of its construction commencement milestone.⁴⁷ Waiving Columbia's construction commencement milestone would relieve Columbia of any requirement to commence construction of its satellite, rather than merely rescheduling Columbia's construction commencement deadline. Elimination of Columbia's construction commencement deadline is no more justified than extending the deadline.

19. Rules may be waived if there is "good cause" to do so.⁴⁸ Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.⁴⁹ Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."⁵⁰ Also, if the

⁴⁵ *Columbia Authorization Order*, 14 FCC Rcd at 3330 (para. 40); *April 5 Letter*.

⁴⁶ *See* Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, GE American Communications, Inc. Request for Extension of Construction and Launch Milestones for GE-3, Memorandum Opinion and Order, 13 FCC Rcd 13863, 13865-66 (paras. 5-7) (1998) (*1998 GE Americom Order*) (granting GE Americom a 60-day extension of its construction commencement milestone in conjunction with reassigning its satellite to another orbit location, to help resolve complicated international coordination issues with other countries); *MCI Order*, 2 FCC Rcd at 234 (paras. 7-9) (extending the milestones for one of MCI's two licenses because a series of launch failures that disrupted the industry at that time, including the *Challenger* disaster, may have played a part in MCI's failure to begin construction of that satellite).

⁴⁷ *Columbia Request* at 6-7.

⁴⁸ *See* Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. *See also* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁴⁹ *Northeast Cellular*, 897 F.2d at 1166. *See also* *Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services*, Order, 11 FCC Rcd 9622, 9625 (para. 10) (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy*, Memorandum Opinion and Order, 11 FCC Rcd 2535, 2536 (para. 4) (Int'l Bur. 1996).

⁵⁰ *WAIT Radio*, 418 F.2d at 1159.

Commission grants waivers, it must identify and articulate reasonable standards that are predictable, workable, and not susceptible to discriminatory application.⁵¹ Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.⁵² Courts have observed that "[a]n applicant for waiver faces a high hurdle even at the starting gate. 'When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.'"⁵³

20. Columbia has not demonstrated that it faces special circumstances that warrant a waiver. We explained above that Columbia is concerned that its pending merger application may make its construction contract "complicated." We also concluded that the any construction contract complications related to Columbia's proposed merger are not substantially different than the necessary and routine matters normally involved in merger transactions.⁵⁴ Thus, the possibility of a complicated construction contract is not a "special circumstance" that can justify a waiver.

21. We also find that waiving Columbia's construction commencement milestone would undermine the policy objective of milestone requirements. We noted in the *Columbia Modification Order* that the milestone schedule is necessary to ensure that licensees cannot "warehouse" increasingly scarce orbital resources.⁵⁵ We also observed above that the construction commencement milestone is crucial to the Commission's warehousing policies, to ensure that unused spectrum is reassigned as quickly as possible to another qualified entity when there are substantial doubts as to whether the licensee intends to or is able to proceed with its business plan.⁵⁶ We have waived construction commencement milestones only in rare instances. In the *Dominion Video Order*, for example, the Bureau waived Dominion Video's construction commencement milestone in part because the licensee was already providing service by leasing capacity on Echostar III, a "state-of-the-art" satellite, and because of the unique channel assignment policies in the Direct Broadcast Service.⁵⁷ This is not the case here. First, Columbia plans to serve existing C-band customers with its leased capacity on TDRS-6 until it launches its replacement satellite.⁵⁸ In contrast to the

⁵¹ *Northeast Cellular*, 897 F.2d at 1166.

⁵² *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182, 8185 (para. 5) (Int'l Bur., 1999) (*Dominion Video*).

⁵³ *WAIT Radio*, 418 F.2d at 1157, *quoting* *Rio Grande Family Radio Fellowship Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968). *See also* *Ameritech Operating Companies, Order*, 6 FCC Rcd 746, 747 (para. 16) (Com. Car. Bur. 1991).

⁵⁴ *See* Section III.A.1.

⁵⁵ *Columbia Modification Order* at para. 11, *citing* *Nexsat Order*, 7 FCC Rcd at 1991 (para. 8); *MCI Order*, 2 FCC Rcd 233.

⁵⁶ *See* Section III.A.3.

⁵⁷ *Dominion Video Order*, 14 FCC Rcd at 8186 (para. 11). Echostar III is licensed to Direct Broadcast Satellite Corporation, an affiliate of the Echostar Satellite Corporation.

Echostar II satellite, TDRS-6 does not meet Commission technical requirements in place since 1983.⁵⁹ We have already found that Columbia cannot justify delaying construction and launch of a state-of-the-art satellite on the basis of its lease on TDRS-6.⁶⁰ Second, in the *Dominion Video Order*, the Commission found that since Echostar and Dominion were both assigned to operate on various channels at the 61.5° W.L. orbit location, "[t]aking advantage of the transponder capacity that is already in orbit will avoid the enormous expense and delay involved in constructing and launching a separate satellite."⁶¹ Dominion was authorized to operate on only eight of the 32 available DBS channels at that orbit location. In contrast, Columbia is authorized to operate across the entire 500 MHz of C-band bandwidth available at the 47° W.L. orbit location. Consequently, Columbia's leased capacity on TDRS-6 cannot justify elimination of its construction commencement deadline any more than it can justify extension of that deadline.

IV. CONCLUSION

22. We conclude that Columbia has not shown that it faces any circumstances beyond its control that would warrant an extension of its construction commencement milestone. We further conclude that Columbia has not shown that it faces any special circumstances that would justify as waiver under the Commission's rules.

V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that Section 25.153(a) of the Commission's rules, 47 C.F.R. § 25.153(a), IS WAIVED, to the extent necessary to address Columbia Communications Corporation's milestone extension request on its merits.

24. IT IS FURTHER ORDERED that the request to extend milestones, filed by Columbia Communications Corporation on February 8, 2000, IS DENIED.

25. IT IS FURTHER ORDERED that the request to waive milestone requirements, filed by Columbia Communications Corporation on February 8, 2000, IS DENIED.

⁵⁸ Columbia Request at 7.

⁵⁹ Systematics General Corporation, Memorandum Opinion and Order, 103 FCC 2d 879, 881-82 (paras. 6-9) (1985). *See also* Columbia Communications Corporation, Memorandum Opinion, Order, and Authorization, 7 FCC Rcd 122, 123 (para. 15) (1991), *cited in Columbia Modification Order* at para. 13 n.39.

⁶⁰ *Columbia Modification Order* at paras. 13-15.

⁶¹ *Dominion Video Order*, 14 FCC Rcd at 8186 (para. 11).

26. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the release of this Order. (*See* 47 C.F.R. § 1.4(b)(2).)

FEDERAL COMMUNICATIONS COMMISSION

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